

ability shall be immediately referred by the Federal Emergency Management Agency to appropriate State representatives without referral to SBA, in order to expedite assistance to victims. Disaster victims who desire to do so, however, may file an application with SBA in order to obtain a decision on their eligibility for financial assistance from SBA (OMB Approval No. 3245-0017 or 3245-0018).

14. Section 123.25 *Special Conditions—home loans* is further amended by removing paragraph (g) *RESPA* therefrom and renumbering present paragraph (h) as paragraph (g).

#### § 123.26 [Amended]

15. Section 123.28 *Special Conditions—business loans* is amended by removing from the second sentence of paragraph (a) *Limits* the reference "§ 121.3-2" and inserting instead "Part 121."

16. Section 123.29 is revised to read as follows:

#### § 123.29 Loans to privately owned colleges and nonprofit organizations.

SBA is authorized to make physical disaster loans in the case of loss or damage as a result of a declared Disaster (see § 123.23), to the extent that such loss or damage is not compensated by insurance or otherwise, to a privately owned college or university. SBA may further, in the case of a Major Disaster, waive interest payments on loans to such schools for the first three years of the term of such loans. See also § 123.13. SBA may also make such physical disaster loans to nonprofit organizations, including agricultural cooperatives (see § 123.41(b)(3)). Loans to such schools and such nonprofit organizations able to obtain Credit Elsewhere (as defined in § 123.3) shall be made at the Old Formula Rate. Loans to such concerns unable to obtain Credit Elsewhere shall be made at the same rate as loans to small concerns unable to obtain Credit Elsewhere (see § 123.26(b)).

17. Section 123.40 *Introduction* is amended by revising the first sentence thereof to read as follows:

Loans to which this subpart applies are available only to small business concerns (including small nurseries affected by a drought disaster) and small agricultural cooperatives situated in a Disaster Area (see definition in § 123.3), which have suffered or are likely to suffer substantial economic injury (as defined in § 123.41(a)) as a result of that specific Disaster (see § 123.23).

18. Section 123.41 is amended by revising paragraph (b) to read as follows:

#### § 123.41 General Provisions.

(b) *Eligible Applicants.* (1) Loans under this subpart are authorized only for small business concerns (including small nurseries affected by a drought disaster designated by the Secretary of Agriculture) and small agricultural cooperatives (see paragraph (b)(3) of this section), located within the Disaster Area and meeting the size standards of Part 121 of this Chapter as of the time (stated in the relevant declaration or designation) when the economic injury commenced, and which have suffered or are likely to suffer substantial economic (as distinguished from physical) injury directly resulting from a declared Disaster and are unable to obtain Credit Elsewhere (as defined in § 123.3).

(2) Small concerns regardless of their business activity are eligible to apply for these loans, except for multi-level sales distribution plans of the "pyramid" type, media of any description, gambling, illegal activities (see § 120.101-2 of this Chapter), investment, speculative ventures (e.g., mineral exploration), and rental property (see § 120.102 of this Chapter).

(3) Consumer and marketing cooperatives are eligible for loans under this subpart. Other cooperatives are eligible only if small and each of the owners would itself qualify as small under part 121 of this chapter. However, small agricultural cooperatives acting pursuant to the provisions of the Agricultural Marketing Act (12 U.S.C. 1141), and meeting the size standards of part 121 of this Chapter as of the time of the Disaster with respect to which a declaration or designation under section 7(b)(2) of the Act has been issued, are eligible.

(4) Applicants determined by SBA as able to obtain Credit Elsewhere are not eligible for loans under this subpart.

#### § 123.41 [Amended]

19. Section 123.41 *General Provisions* is further amended by removing from the provision in paragraph (e) thereof "§ 121.3-2" and inserting "part 121".

(Catalog of Federal Domestic Assistance, Numbers 59002, Economic Injury Disaster Loans, 59008, Physical Disaster Loans)

Dated: August 23, 1989.

Susan Engelleiter,  
Administrator.

[FR Doc. 89-29645 Filed 12-21-89; 8:45 am]

BILLING CODE 8025-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FRL-3699-4]

## Approval and Promulgation of Implementation Plan, State of Texas; Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

**SUMMARY:** The purpose of this Federal Register notice is to propose approval of a revision to the Texas State Implementation Plan (SIP) that contains the Texas Air Control Board (TACB) Regulation VI, Section 116.3(a)(13), for the Prevention of Significant Deterioration (PSD) program. This proposed approval, when finalized, will enable the State of Texas to issue and enforce PSD permits directly in certain areas of the State without final approval by the EPA. Texas Regulation VI, Section 116.3(a)(13), does not apply to the sources located or wanting to locate on Indian lands. Neither is Section 116.3(a)(13) applicable to new major sources or modifications to existing major stationary sources which must include emissions from docked vessels. This PSD SIP revision is proposed for approval under the statutory requirements of Sections 110 and 160-169 of the Clean Air Act as amended August 1977.

Today's notice is published to solicit public comments on the proposed approval of the Texas State PSD regulations. The rationale for this proposed action is contained in this notice and further explained in detail in the *Technical Support Document*.

**DATE:** Comments must be received on this proposed action on or before January 22, 1990.

**ADDRESSES:** Written comments should be submitted to the address below: Chief, SIP New Source Section (6T-AN), Air Programs Branch, Air, Pesticides, and Toxics Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

Copies of the State's submittal and EPA's *Technical Support Document* along with other information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

SIP New Source Section, Air Programs Branch, Air, Pesticides, and Toxics Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 655-7214

Texas Air Control Board, Technical Support and Regulation Development, 6330 Highway 290 East, Austin, Texas 78723, Telephone: (512) 451-5711.

**FOR FURTHER INFORMATION CONTACT:**

Mr. J. Behnam, P.E.; SIP New Source Section, Air Programs Branch, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 655-7214.

**SUPPLEMENTARY INFORMATION:** On November 10, 1980, the State of Texas requested delegation of the technical and administrative review portion of the Federal PSD program. The PSD partial authority was granted on April 23, 1981, subject to certain conditions. Subsequently, additional authority was granted to the State to conduct compliance inspections and to review compliance test reports for PSD sources on December 28, 1982, and a notice was published in the Federal Register of February 9, 1983 (48 FR 6023).

On October 26, 1987, the Governor of Texas submitted a copy of the revision to Texas Air Control Board (TACB) Regulation VI, Control of Air Pollution by Permits for New Construction or Modification, as a SIP revision to the EPA for approval. The revised section of Regulation VI (Section 116.3(a)(13)) incorporated by reference (IBR) the Federal PSD regulations (40 CFR 52.21); however, the TACB excluded Control Technology Review (40 CFR 52.21(j)), Air Quality Models (40 CFR 52.21(i) and Public Participation (40 CFR 52.21(q)).

It should be noted that the October 26, 1987, submittal did not include the PM<sub>10</sub> revisions which were incorporated into the Federal PSD regulations by promulgation of the PM<sub>10</sub> standards on July 1, 1987, because the State regulations were in the State's process of public participation and approval before the PM<sub>10</sub> promulgation date. The TACB, in response to the PM<sub>10</sub> SIP requirements, has further revised Section 116.3(a)(13) to include the PM<sub>10</sub> revisions in its permit regulations. Since the TACB adopted the Federal regulations by reference, the only revision to satisfy the requirements of the PM<sub>10</sub> revisions was to replace the November 6, 1986 date [the date that 40 CFR 52.21 was adopted by the State] with August 1, 1987, in Section 116.3(a)(13). This amendment was adopted by the TACB on July 15, 1988, and it was submitted by the Governor on September 29, 1988, for approval. The

EPA by this notice is acting on both of the October 26, 1987 and September 29, 1988 submittals, and the final approval of the Texas PSD program will be based on the combined evaluation of these revisions.

Also, on October 26, 1987, the Governor of Texas submitted a revision to the Texas SIP and regulations to meet the requirements of visibility New Source Review for Federal Class I areas (40 CFR 51.307) and the stack height regulations. The TACB stack height regulations, Regulation VI, Section 116.3(a)(14), have been reviewed and approved by the EPA and published under a separate action in the November 22, 1988, Federal Register (53 FR 47189).

The State's Regulation VI requires review and control of air pollution from new facility construction and modification and allows the TACB to issue permits for stationary sources subject to this regulation. Section 116.3(a)(13) of the TACB Regulation VI adopts the Federal PSD program (40 CFR 52.21) by IBR; however, the State explicitly excludes several sections of that regulation and other requirements which are necessary for an approvable PSD SIP revision. The reasons for these exclusions are discussed later in this notice. The TACB conducted a complete public participation program pursuant to 40 CFR 51.102 and the final revisions were adopted by the Board on July 17, 1987. The State's revised regulations became effective on August 30, 1987.

The EPA has reviewed and evaluated the TACB's revised Regulation VI, Section 116.3(a)(13), based on the criteria specified in the Federal regulations 40 CFR 52.21, 40 CFR 51.166, and the Clean Air Act amended August 1977. The EPA's review also included other relevant TACB regulations and the State statutes including the Texas Clean Air Act. The results of this evaluation are discussed in the following sections of this notice.

In adopting the Clean Air Act, Congress designated EPA as the agency primarily responsible for interpreting the statutory provisions and overseeing their implementation by the states. The EPA must approve state programs that meet the requirements of 40 CFR 51.166. Conversely, EPA cannot approve programs that do not meet those requirements. However, PSD is by nature a very complex and dynamic program. It would be administratively impracticable to include all statutory interpretations in the EPA regulations and the SIPs of the various states, or to amend the regulations and SIPs every time EPA interprets the statute or regulations or issues guidance regarding

the proper implementation of the PSD program, and the Act does not require EPA to do so. Rather, action by the EPA to approve this PSD program as part of the SIP will have the effect of requiring the state to follow EPA's current and future interpretations of the Act's PSD provisions and EPA regulations, as well as EPA's operating policies and guidance (but only to the extent that such policies are intended to guide the implementation of approved state PSD programs). Similarly, EPA approval also will have the effect of negating any interpretations or policies that the state might otherwise follow to the extent they are at variance with EPA's interpretation and applicable policies. Of course, any fundamental changes in the administration of PSD would have to be accomplished through amendments to the regulations in 40 CFR 52.21 and 51.166, and subsequent SIP revisions.

Upon approval of the state's PSD SIP, EPA will continue to oversee implementation of this important program by reviewing and commenting upon draft permits. Specifically, EPA will comment upon any failure to follow the letter of the law, as well as EPA's statutory and regulatory interpretations and applicable guidance. If a final PSD permit still does not reflect consideration of the relevant factors, EPA will deem the permit to be not in conformance with the PSD requirements of the Act and the State's SIP, and will consider appropriate enforcement action under sections 113 and 167 of the Clean Air Act to address the permit deficiency. However, except as to matters which could have been raised in the court of appeals upon promulgation of the PSD regulations or other final action of the EPA, any party which is the target of an enforcement action may seek judicial review of the EPA interpretation or policy in question in defending against the enforcement action. See section 307(b)(2) of the Clean Air Act.

**Control Technology Review—**The Federal regulations in 40 CFR 51.166(j) require applicants for PSD permits to consider and install the best available control technology (BACT) in construction of new sources or modification of existing major stationary sources. This provision of the Federal PSD regulations has been excluded from the TACB Regulation VI because the TACB claims that the Texas Clean Air Act and the existing State regulations have provisions for application of BACT as stringent as the Federal requirements in reviewing the permit applications. The EPA review of the Texas Clean Air Act and Regulation VI (Sections 116.3(a)(3) through 116.3(a)(5)) have

indeed revealed that the existing TACB permit requirements meet the provisions of the Federal PSD regulations specified in 40 CFR 51.166(j)(1) through 51.166(j)(3) with the exception of 40 CFR 51.166(j)(4). Section 40 CFR 51.166(j)(4) concerns permitting of and BACT analysis for phased construction projects. Lack of this provision in the State regulation requires the TACB to issue a new permit for each phase of a facility's phased construction project, or issue a single permit for all phases of a planned construction if a continuous construction program can be maintained without interruption and the entire project can be completed within a reasonable time frame. Since in either case the applicants will be required to consider and apply the latest state-of-the-art BACT in order to secure PSD permits under the State regulations, exclusion of 40 CFR 51.166(j)(4) does not relax the Federal BACT application to phase construction projects in Texas.

In addition, the TACB adopted the definition of BACT by reference as found in 40 CFR 52.21(b)(12) (40 CFR 51.166(b)(1)). Adoption of this definition combined with the State's BACT regulations (as discussed above) fulfill the basic requirements of 40 CFR 51.166 (and Clean Air Act section 160-169) for the proposed approval of this SIP.

However, as noted above, EPA's approval of the Texas PSD SIP requires the state to follow EPA's statutory interpretations and applicable policies. With respect to BACT, EPA is proposing approval of the PSD SIP with the understanding that Texas will adhere to the following interpretations.

EPA has interpreted the BACT definition in section 169(3) of the Clean Air Act and 40 CFR 52.21(b)(12), which Texas has adopted by reference, as containing two core criteria. First, a PSD applicant must consider the most stringent control technology (and associated emission limitation) that is available in conducting a PSD analysis. Second, if the applicant proposes as BACT a control alternative that is less effective than the most stringent available, it must demonstrate to the State through objective indicators that case-specific energy, environmental, or economic impacts renders that alternative unreasonable or otherwise not achievable. The State must exercise independent judgment in reviewing that demonstration. These statutory interpretations are further amplified in case examples such as Honolulu Resource Recovery Facility (PSD Appeal No. 88-8; Remand Order of June 22, 1987); New Jersey Resource Recovery Facility, Pennsauken County, (PSD

Appeal No. 88-8; Remand Order of November 10, 1988); and Columbia Gulf Transmission Company (PSD Appeal No. 88-11; Remand Order of June 21, 1989). In order to implement these statutory interpretations, the EPA has issued further guidance ("Improving New Source Review Implementation", dated December 1, 1987, A Memorandum from J. Craig Potter, Assistant Administrator for Air and Radiation, to the Regional Administrators) calling on states to use a "top-down" approach to BACT analyses. In EPA's judgment, the core BACT requirements can be most efficiently satisfied if the BACT analysis considers first the most stringent—i.e., "top"—control alternative.

In addition, EPA has interpreted [See North County Resource Recovery Associates (PSD Appeal No. 85-2; Remand Order of June 3, 1986)] the "environmental impacts" component of the BACT definition as requiring the permitting authority, in establishing BACT for pollutants that are regulated under the Clean Air Act, to consider the environmental impacts of the various control alternatives on emissions of unregulated pollutants.

In support of the discussion above, the Executive Director of the TACB has submitted a letter, dated September 5, 1989, which commits the TACB to implement the PSD SIP approved program in compliance with all of the EPA's statutory interpretations and operating policies. Specifically, the TACB's letter states that (1) "... you may be assured that the position of the agency is, and will continue to be, to implement EPA requirements relative to programs for which we have received State Implementation Plan approval, and to do so as effectively as possible ...", and (2) "... the TACB is committed to the implementation of the EPA decisions regarding PSD program requirements ...". The EPA has evaluated the content of this letter and has determined that the letter sufficiently commits the TACB to carry out the PSD program in accordance with the Federal requirements as set forth in the Clean Air Act, applicable regulations, and as further clarified in the EPA's statutory and regulatory interpretations, including the proper conduct of BACT analyses. The EPA also interprets this letter as committing the TACB to follow applicable EPA policies such as the "Top-Down" approach. This letter will be incorporated into the SIP upon the final approval action.

2. Vessel Emissions—The EPA's 1980 PSD regulations included the dockside

emissions of vessels as primary emissions in determining PSD applicability for a proposed source or modification. See 45 FR 52678, 52696, 52736 (August 7, 1980). The EPA subsequently decided to reconsider that decision, and in 1982 issued revised regulations excluding dockside vessel emissions.

See 47 FR 27554 (June 25, 1982). In 1984, the court of appeals vacated that portion of EPA's 1982 actions which excluded dockside vessel emissions for PSD applicability purposes (including the provision "... except the activities of any vessel ..." in 40 CFR 51.166 (b)(6) [formerly designated as 51.24(b)(6)] and remanded the matter to EPA for further action. *NRDC v. EPA*, 725 F.2d 761 (D.C. Cir. 1984). The court's disposition had the effect of reinstating the dockside emission provisions of the 1980 regulations pending further rulemaking by EPA. *Id.* at 772. The EPA has not yet acted on the court's remand.

The TACB has declined to accept the EPA comments on the draft Texas SIP that recommended consistency between the State regulations and the court's decision. Instead, the Texas rules incorporate 40 CFR 51.166 (b)(6) as it currently appears in the Code of Federal Regulations. Accordingly, EPA proposes to retain PSD permitting authority over sources and modifications that would be affected by the dockside emissions of vessels. After the final approval of the Texas PSD program, the TACB will have to submit all such affected PSD applications to the EPA for review and issuance of the permits.

3. Air Quality Model—Section 40 CFR 51.166(1) of the Federal PSD regulations requires the applicants to use the EPA approved models for all PSD permitting purposes. The *Guideline on Air Quality Models (Revised 1986)* which contains the EPA approved models is incorporated by reference into the PSD regulations under Section 40 CFR 51.166(1). The TACB has excluded the Federal modeling provisions from its regulations; however, the State added an air quality modeling provision to its regulations under Regulation VI, Section 116.3(a)(13). The text of this language is provided below:

"... All estimates of ambient concentrations required under this paragraph shall be based on the applicable air quality models and modeling procedures specified in the *EPA Guideline on Air Quality Models*, as amended, or models and modeling procedures currently approved by EPA for use in the state program, and other specific provisions made in the state PSD State Implementation Plan. If the air quality impact model approved by EPA or specified in the guideline is inappropriate, the model may be

modified or another model substituted on (1) a case-by-case basis, or (2) a generic basis for the state program, where appropriate. Such a change shall be subject to notice and opportunity for public hearing and written approval to the Administrator of the EPA.

The EPA has reviewed this added language and has determined that the TACB's modeling requirements specified in Regulation VI, Section 116.3(a)(13), are equivalent and consistent with the provisions of 40 CFR 51.166(1).

4. **Public Participation**—The State has excluded Section 40 CFR 51.166(q), PSD permit public participation, from its Regulation VI. However, the TACB has fulfilled the requirements for public participation by (1) the existing State regulations and (2) imposing additional procedures in the SIP supplement entitled "Revision to the Texas State Implementation Plan for Prevention of Significant Deterioration of Air Quality". Sections 116.10(a) and 116.10(c) of Regulation VI contain provisions that are equivalent to 40 CFR 51.166(q) except for several sections. These excepted sections are: 40 CFR 51.166(q)(1) that requires the reviewing agency to notify the applicants of the completeness or a deficiency in the application within a specified time period; 40 CFR 51.166(q)(2)(ii) that requires the State to include the degree of expected increment consumption (in  $\mu\text{g}/\text{m}^3$ ) from the source or modification in the public notice; and 40 CFR 51.166(q)(2)(iv) that requires the State to send a copy of the public notice to any comprehensive regional land use planning agency and to any other affected agencies or Indian Governing Body. These requirements are covered under the SIP supplement which will become an enforceable part of the Texas PSD SIP when EPA finally approves this program.

5. **Jurisdiction over Indian Lands**—The Congress of the United States enacted "Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act" on August 18, 1987. This Act established two Federally designated Indian lands in the State of Texas; namely "Title I—Ysleta del Sur Pueblo Restoration" and "Title II—Alabama and Coushatta Indian Tribes of Texas". Section 107(b) of Title I and Section 207(b) of Title II explicitly exclude the State's regulatory jurisdiction from the Federally designated Indian lands. Therefore, the State of Texas can not perform any air quality regulatory activities on these Indian lands. In addition, the State did not request any authority for Indian land nor did it protest the Federal authority when the EPA expressed its intention of

retaining this authority in the PSD SIP comment letters to the TACB. Based on this statutory limitation, the EPA retains its authority for air quality regulatory and enforcement activities including issuance of PSD permits for sources located (or wanting to locate) on these Federally designated Indian lands. Questions, inquiries, and any other activities related to air quality planning and enforcement that affect Indian lands directly or indirectly should be referred to the EPA Region 6 Office at the address given in this notice.

6. **Other Provisions**—The EPA will retain authority for extension of the permits which were issued by the regional office before approval of this SIP. In response to this, the TACB has excluded 40 CFR 52.21(r)(2) from its Regulation VI. In addition, other sections of the Federal PSD regulations such as 40 CFR 52.21(s), 40 CFR 52.21(u), and 40 CFR 52.21(w) which are applicable only to the Federal agency are excluded from incorporation by reference. The plan requirements under 40 CFR 51.166(a) are addressed in the State SIP supplement.

7. **New Source Review Visibility**—On October 23, 1984 [49 FR 42670], EPA required those States that had not yet done so (including Texas) to submit State Implementation Plan (SIP) revisions for visibility protection by May 6, 1985. The State's plan had to contain a visibility monitoring strategy and visibility new source review (NSR) regulations in compliance with the provisions of 40 CFR 51.305 (visibility monitoring) and 51.307 (visibility NSR). Texas submitted its plan for NSR on December 11, 1985. EPA published a Notice of Delegation of Authority for Visibility NSR under the Federal Prevention of Significant Deterioration (PSD) program on November 4, 1986 [51 FR 40072]. The October 28, 1987, submittal, which incorporated by reference the Federal PSD regulation, contained all of the visibility NSR requirements specified in 40 CFR 51.307. Therefore, the EPA is also proposing to approve the TACB's plan for protection of visibility in mandatory Federal Class I areas under the NSR program.

In summary, the TACB has adopted the Federal PSD regulations in 40 CFR 52.21 through incorporation by reference, but the State has excluded several sections of the Federal regulations. However, the State has argued that its existing regulations for new source review and the Texas Clean Air Act have provisions that fulfill the requirements of the excluded sections as effectively as the Federal regulations.

The EPA has reviewed and evaluated the TACB's existing SIP regulations, the

PSD SIP submitted by the Governor of Texas, the TACB's commitment letter of September 5, 1989, and the Texas Clean Air Act. The EPA's preliminary determination is that the State's regulations, procedures, incorporation of the Federal PSD regulations, and the PSD commitment letter are adequate for authorizing the TACB to directly review the PSD permit applications, and issue and enforce the PSD permits in certain areas of the State. For the reasons discussed in this notice, the EPA will retain authority for reviewing, issuing, and enforcing the PSD permits on Indian lands and new or modification of major stationary sources which include emissions from docked vessels. Based on this evaluation, the EPA proposes to approve the Texas PSD SIP revision.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), I certify that this proposed SIP approval will not have a significant economic impact on a substantial number of small entities (46 FR 8709).

This proposed rulemaking is issued under the authority of sections 110, 160-169, and 301 of the Clean Air Act, 42 U.S.C. 7410, 7470-7479, and 7601.

#### List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide and Hydrocarbons.

Dated: October 20, 1989.

Robert E. Layton Jr., P.E.,

Regional Administrator.

[FR Doc. 89-29772 Filed 12-21-89; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. 88-06, Notice 6] RIN: 2127-AC43

### Federal Motor Vehicle Safety Standards; Side Impact Protection—Light Trucks, Buses, and Multipurpose Passenger Vehicles

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to extend the existing requirements of Federal Motor Vehicle Safety Standard

EPA is approving these SIP revisions without prior proposal because the Agency views these as noncontroversial amendments and anticipates no adverse comments. This action will be effective 60 days from the date of this Federal Register notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on (60 days from today).

**FINAL ACTION:** EPA is approving COMAR 26.11.01.01 Z. and CC., the definitions of true vapor pressure and vapor pressure, as part of the Maryland SIP. These definitions are consistent with the Clean Air Act and EPA guidance.

The Agency has reviewed this request for revision of the federally-approved state implementation plan for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action, pertaining to the approval of the definitions of true vapor pressure and vapor pressure for the Maryland SIP, has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The Office of Management and Budget has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean

Air Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 24, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in civil or criminal proceedings to enforce its requirements. (See 42 U.S.C. 7607(b)(2).)

#### List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 22, 1992.

Edwin B. Erickson,  
Regional Administrator, Region III.

For the reasons set out in the preamble, Chapter I, title 40 of the Code of Federal Regulations is amended as follows.

#### PART 52 [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

#### Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(99) to read as follows:

##### § 52.1070 Identification of plan.

• • • • •

(c) • • •

(69) Revisions to the State Implementation Plan submitted by the Maryland Department of the Environment on June 30, 1987.

(i) *Incorporation by reference.*

(A) Letter from the Maryland Department of Environment dated June 30, 1987 submitting a revision to the Maryland State Implementation Plan pertaining to the definitions of true vapor pressure and vapor pressure.

(B) Maryland Register Volume 13, page 2048; COMAR 10.18.01.01 Definitions V-1. and X-1 (Now recodified as COMAR 26.11.01.01 Z. and CC.).

[FR Doc. 92-14683 Filed 6-23-92; 8:45 am]

BILLING CODE 5560-50-M

#### 40 CFR Part 52

(TX 4097; FRL 4137-8)

#### Approval and Promulgation of Implementation Plan State of Texas Prevention of Significant Deterioration

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rulemaking.

**SUMMARY:** This Final Rule approves a revision to the Texas State Implementation Plan (SIP) that includes amendments to the Texas Air Control Board (TACB) Regulation VI, General Rules, a Supplement, and commitment letters, all related to the Prevention of Significant Deterioration (PSD) program. This approval enables the State of Texas to issue and enforce PSD permits directly in most areas of the State without final issuance of those PSD permits by the EPA. The proposed approval notice was published in the Federal Register on December 22, 1989. The EPA has reviewed and considered the public comments it has received in taking final action to approve this SIP revision; responses to significant comments are presented in this notice.

The Texas PSD SIP revision does not apply to sources located or wanting to locate on Indian lands. Neither is it applicable to new major sources or major modifications to existing stationary sources for which applicability determinations would be affected by dockside emissions from vessels. This PSD SIP revision has been approved under the statutory requirements of Sections 110 and 160 through 169 of the Clean Air Act (the Act).

As a result of today's final action, the TACB will have direct authority on the effective date of this rule, to issue and enforce the PSD permits in most areas of Texas, with the limitations described in this rule. The PSD delegation agreement of April 23, 1981, additional authority dated December 28, 1982, and addendum dated August 21, 1988, shall remain in effect for major new sources and major modifications to existing sources for which applicability determinations would be affected by dockside emissions from vessels. Under this agreement, the TACB has administrative, technical review, and public participation authority for PSD permit applications associated with dockside vessel emissions, and the EPA has final permit approval and enforcement authority regarding such sources including oversight of PSD applicability determinations regarding such sources. All of the inquiries,

requests, and PSD applications related to emissions from docked vessels should be directed initially to the TACB at the address given in this notice. Further rationale for this final approval action is contained in the notice of proposed rulemaking and this final action, and is further explained in detail in the Technical Support Document.

**EFFECTIVE DATE:** This action becomes effective on July 24, 1992.

**ADDRESSES:** Copies of the State's submittal and EPA's Technical Support Document along with other relevant information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

Chief, Planning Section (6T-AP), Air Programs Branch, Air, Pesticides, and Toxics Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 655-7214, or  
Texas Air Control Board, Planning and Development, 12124 Park 35 Circle, Austin, Texas 78753, Telephone: (512) 908-1000.

In addition, all requests, reports, applications, and any other communications relating to PSD permits for the affected facilities in Texas, in areas outside of Indian lands, should be sent directly to the Texas Air Control Board, 12124 Park 35 Circle, Austin, Texas 78753. Sources located on Federally-designated Indian lands in the State of Texas should submit the information specified above to the Chief, Region 6 Air Programs Branch, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733.

**FOR FURTHER INFORMATION CONTACT:** Mr. J. Behnam, P. E.; Air Programs Branch, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 655-7214.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On November 10, 1980, the State of Texas requested delegation of the technical and administrative review and public participation portions of the Federal PSD program. Pursuant to 40 CFR 52.21(u), the PSD partial delegation of authority was granted on April 23, 1981, subject to certain conditions. On December 28, 1982, additional authority was granted to the State to conduct compliance inspections and to review compliance test reports for PSD sources. See 48 FR 6023 (February 9, 1993). Texas

has also been delegated partial authority for the Visibility Protection New Source Review (NSR) program under the Federal PSD program within 40 CFR 52.21(p), which was revised to incorporate the visibility protection SNR requirements of 40 CFR 51.307 on July 12, 1985. See 51 FR 40072 (November 4, 1986).

On December 11, 1985, October 26, 1987, February 18, 1988, and September 29, 1988, the Governor of Texas submitted PSD SIP revisions to EPA for approval. The October 26, 1987, submittal also included revisions to meet the requirements of the stack height regulation under the Act (40 CFR 51.100). The TACB stack height regulation, Regulation VI, Section 116.3(a)(14), has been reviewed and approved by the EPA and published under a separate action. See 53 FR 47189 (November 22, 1988).

The State's Regulation VI requires review and control of air pollution from new facility construction and modification and allows the TACB to issue permits for stationary sources subject to this regulation. Section 116.3(a)(13) of the TACB Regulation VI incorporates by reference the Federal PSD regulations (40 CFR 52.21) as they existed on August 1, 1987, which include revisions associated with the July 1, 1987, promulgation of revised National Ambient Air Quality Standards for particulate matter (52 FR 24872) and the visibility NSR requirements noted above. The State explicitly excluded several sections of the Federal PSD regulation not necessary for approval of the Texas program. The reasons for these exclusions were discussed in the proposed approval notice of December 22, 1989 (54 FR 52823). Other requirements necessary for an approvable PSD SIP revision, such as enforcement by Texas of EPA-issued PSD permits, were adopted by the TACB in its General Rules. Also, the public participation requirements of the Federal PSD regulations are met by the existing SIP-approved section 116.10 of Regulation VI and the PSD Supplement as adopted by the TACB on July 17, 1987.

In developing its PSD SIP, the TACB conducted a complete public participation program pursuant to 40 CFR 51.102, and the final revisions were adopted by the Board on July 26, 1985, July 17, 1987, December 18, 1987, and July 15, 1988. In today's final action, it should be noted that EPA is not taking action on the following amendments: (1) Amendments to Sections 116.1, 116.2, and 116.10 of Regulation VI as adopted on July 26, 1985 by the TACB and submitted by the Governor on December

11, 1985; (2) amendments to section 116.10 of Regulation VI as adopted on July 17, 1987 by the TACB and submitted by the Governor on October 26, 1987; (3) amendments to sections 116.5 and 116.10 as adopted by the TACB on December 18, 1987 and submitted by the Governor on February 18, 1988; and (4) amendments to Sections 116.1 and 116.10 as adopted by the TACB on July 15, 1988 and submitted by the Governor on September 29, 1988. EPA will be taking separate action on the above amendments and other pending SIP revisions to Regulation VI at a later date.

The EPA has reviewed and evaluated the PSD SIP submittals based on the criteria specified in the Federal regulations at 40 CFR 52.21, 40 CFR 51.166, and the Act. The EPA's review also included other relevant SIP-approved TACB regulations and the Texas Clean Air Act. A discussion of this evaluation, as of that date, is included in EPA's proposed approval notice of December 22, 1989 (54 FR 52823). This evaluation has continued through the public notice and comment process.

#### **Public Comments**

The EPA received comments from the Texas Utility Service, Texas Chemical Council, American Paper Institute, National Forest Products Association, MacMillan Bloedel, Inc., Champion International Corporation, Utility Air Regulatory Group, International Paper and the law firm of Brown, Maroney and Oaks Hartline, on behalf of a variety of Texas industrial and manufacturing companies. All of the commenters supported EPA's final approval of the Texas PSD SIP. The commenters objected, however, to certain language in the preamble of the proposed notice. A summary of the significant public comments and EPA's response is narrated below.

**Comment 1:** The commenters expressed concern with the preamble language in the proposal notice, suggesting that final approval would require that the State follow EPA's current and future interpretations of the Act's PSD provisions and EPA regulations as well as EPA's operating policies and guidance. The commenter contended that such a condition would be unlawful, unnecessary, unreasonable, legally untenable, and would improperly limit the State's flexibility. These commenters argued that the State has primary responsibility for implementation once the SIP is approved and thus the State should be making decisions, not EPA. Also, if EPA

wants to condition the PSD SIP approval on commitments to comply with any interpretations, policies, and guidance issued by EPA. EPA must reduce those interpretations, policies and guidance to rules, thereby giving the public opportunity to review and comment before EPA's final decision. If TACB fails to adopt any of these, once reduced to a rule, EPA can issue a SIP call pursuant to section 110(a)(2)(H).

*Response 1:* The EPA did not intend to suggest that Texas is required to follow EPA's interpretations and guidance issued under the Act in the sense that those pronouncements have independent status as enforceable provisions of the Texas PSD SIP, such that mere failure to follow such pronouncements, standing alone, would constitute a violation of the Act. As clarified herein, EPA's intent is merely to place the State and the public on notice of EPA's longstanding views that the Agency must continue to oversee the State's implementation of the PSD SIP. The language in question is neither a part nor a condition of EPA's approval of the Texas PSD SIP, and it has no binding effect. Rather than creating new rights or obligations, it advises the public of EPA's role in overseeing the obligations that already exist by operation of the applicable statutory and regulatory provisions.

The issuance of PSD permits and other actions by the State in the administration of the PSD program must conform to the requirements of the Act, applicable EPA regulations, and the SIP. See sections 167 and 113, 42 U.S.C. 7477 and 7413 (EPA's enforcement authority in overseeing State implementation). In making judgments as to what constitutes compliance with the Act and regulations issued thereunder, EPA looks to (among other sources) its policy statements and interpretive rulings in effect at the time of EPA's action regarding those statutory and regulatory requirements. EPA's approval of a state PSD program or some portion of it does not divest the Agency of its duty to continue a vigorous oversight and enforcement role under sections 167 and 113. For example, section 167 provides that EPA shall take whatever enforcement action may be necessary to prevent construction of a major stationary source that does not conform to the requirements of the PSD program. Thus, the purpose of the preamble language in the proposal notice was to advise Texas and the public of EPA's view that approval of a state's PSD program does not bar EPA from deciding whether the state's action in implementing its SIP conforms to the Act's PSD requirements.

Following SIP approval, then, EPA remains as the congressionally designated agency with primary responsibility to reasonably interpret the applicable Federal law under the Act, and to base its enforcement actions on those interpretations. If EPA determines that a state-issued permit does not conform to the Act's PSD requirements, EPA will decide whether to sue the state and/or the source for declaratory and injunctive relief. See, e.g., section 113(a)(5); 55 FR 23547 (notice of clarification regarding approval of Kentucky PSD SIP).

EPA acknowledges that states have the primary role in administering and enforcing the various components of the PSD program. States have been largely successful in this effort, and EPA's involvement in interpretative and enforcement issues is limited to only a small number of cases. Consequently, EPA's continuing oversight role under the Act leaves Texas and other states with considerable discretion to implement the PSD program as they see fit.

As noted in the proposed approval of Texas' program, EPA may not fundamentally change the requirements set forth in its own regulations or approved SIPs in the guise of new interpretations or policy statements. The creation of new rights or obligations can only be effected through enactment of legislation or promulgation of regulations or approval of SIP revisions, which usually must be preceded by revisions to the regulations in 40 CFR parts 51 and 52, in accordance with applicable rulemaking procedures. Second, EPA's interpretations often are intended in whole or in part to guide only EPA regional offices, and in such instances they have no implications whatsoever for a state's administration of its program. PSD-SIP approved states remain free to follow their own course, provided that state action is consistent with the letter and spirit of the SIP, when read in conjunction with the applicable statutory and regulatory provisions.

*Comment 2:* Another major concern was whether EPA may use section 167 of the Act to challenge State-issued PSD permits. The commenters contended that EPA already has authority under the Act to review permit applications, file written comments, present oral testimony, challenge the State's decision in the State court, take enforcement powers in the State under section 113(a)(2), or issue a SIP revision call under section 110(a)(2)(H) of the Act. The commenters stated that the EPA does not have the authority under

sections 167 and 113 of the Act to sue a permittee for violating the Act.

*Response 2:* The EPA intends to continue its close working relationship with the State and, through informal consultation and formal comments on draft permits, to resolve any issues regarding the adequacy of PSD permits. However, as discussed above, approval of the Texas PSD program does not divest EPA of its enforcement authority. If a final permit is issued that in EPA's view still does not reflect consideration of the relevant factors, EPA may view the permit as inadequate and may consider enforcement action under sections 113 and 167 against the State and/or company to address the permit deficiency. However, in defending against such an enforcement action, a party is free to assert that EPA has not reasonably interpreted the underlying statutory and regulatory provisions.

*Comment 3:* Another allegation is that EPA has improperly included certain provisions in the Texas PSD SIP mandating implementation of the "Top-Down" methodology for determining BACT for PSD permits. The commenters contend that the "Top-Down" approach is inconsistent with the requirements of the Act and that EPA can not legally require that Texas follow this approach. Most commenters also stated that EPA has exceeded its statutory authority in implementing the "Top-Down" BACT approach, and they believed that this policy and guidance should be subject to appropriate rulemaking, public review and comment.

*Response 3:* It is not necessary to resolve the legal issues relating to the top-down approach to BACT. As discussed below in response to Comment 4, EPA agrees that the TACB letter of September 5, 1989, does not mandate the State follow a top-down approach to BACT. In addition, the commenters procedural concerns are being addressed. In 1989, industry groups petitioned EPA to conduct rulemaking to rescind the top-down policy and initiate a rulemaking on BACT determinations based on similar concerns. The EPA denied this request, explaining that the top-down approach was not at variance with, nor a revision of, the PSD regulations, and that no rulemaking was required. Litigation was commenced, resulting in a judicial settlement agreement. See 56 FR 34202 (announcing proposed settlement). In so doing, EPA has agreed to issue a proposed rule to revise or clarify the regulations defining BACT, see 40 CFR 51.166(i) and 52.21(i), and to clarify EPA policy regarding BACT determinations. EPA has decided as a matter of policy to

conduct this rulemaking in order to facilitate greater public participation concerning the issue. The proposed rule is currently being developed.

*Comment 4:* One commenter noted that the TACB's letter, dated September 5, 1989, can not reasonably be interpreted as a legal requirement that the State follow the EPA's present and future new source review interpretations, policies and guidance, including the BACT "Top-Down" approach, because it only commits Texas to implement properly-established EPA requirements and legally-binding EPA decisions. The commenter said that the Clean Air Act specifically requires that, if at all, any such change in EPA policy for BACT determinations be accomplished through notice and comment rulemaking, and that the EPA first prepare an economic impact assessment.

*Response 4:* In certain circumstances, EPA's approval of a SIP revision through notice-and-comment rulemaking procedures can serve to adopt specific interpretations or decisions of the Agency. For example, a state may commit in writing to follow particular EPA interpretations or decisions in administering the PSD program. As part of the SIP revision process, EPA may incorporate that State's commitment into the SIP by reference. This process has been followed in today's action. Of course, EPA agrees with the commenter that the Agency must act reasonably in construing the terms of a commitment letter, so as to avoid approving it in a manner that would contravene the state's intent in issuing the letter in the first place. Moreover, the State commitment must be consistent with the plain language of the applicable statutory or regulatory provisions at issue. Similarly, EPA cannot unilaterally change the clear meaning of any approved SIP provision by later guidance or policy. Rather, as stated in the proposed approval notice, such fundamental change must be accomplished through the SIP revision process.

Consistent with the terms of the TACB letter dated September 5, 1989, EPA views that letter as a commitment on the part of the TACB to "implement EPA program requirements \* \* \* as effectively as possible," and as a commitment "to the implementation of the EPA decisions regarding PSD program requirements." EPA agrees, however, that the TACB letter need not be interpreted as a specific commitment by the State to follow a "Top-Down" approach to BACT determinations.

*Comment 5:* Two commenters indicated that if EPA plans to revise 40

CFR 52.2303 for anything other than approval of the Texas PSD SIP program, then EPA should have provided the public with that additional language in the proposal.

*Response 5:* The EPA's revision today of 52 CFR 52.2303 makes only the pertinent State's submittals part of the SIP. Nothing outside of those State submittals is made part of the Texas PSD SIP.

*Comment 6:* Two commenters stated that the proposed approval notice did not indicate a transition policy for pending permits.

*Response 6:* The EPA Region 6 Office will transfer, on the effective date of this final action, all of the pending PSD permit applications to the State of Texas for review and issuance of final PSD permits. The EPA has no authority to issue PSD permits in the State of Texas upon the effective date of this rulemaking unless Indian lands or docked vessel emissions are involved. All of the PSD permits (other than those for Indian lands and for sources with docked vessel emissions) that will be issued on or after the effective date of this final action must be issued by the TACB, not EPA.

#### Final Action

EPA is today taking final action to approve the following as part of the Texas PSD SIP: (1) TACB Regulation VI, § 116.3(a)(13) as adopted by the TACB on July 26, 1985 and as revised by the TACB on July 17, 1987 and July 15, 1988 and submitted by the Governor on December 11, 1985, October 26, 1987, and September 29, 1988, respectively; (2) the PSD Supplement as adopted by the TACB on July 17, 1987 and submitted by the Governor on October 26, 1987; (3) TACB General Rule, Section 101.20(3) as adopted by the TACB on July 26, 1985 and submitted by the Governor on December 11, 1985; and (4) the TACB commitment letters submitted by the Executive Director on September 5, 1989 and April 17, 1992. In addition, the existing SIP-approved Regulation VI and the Texas Clean Air Act are part of the Texas PSD SIP that is being approved today in this final rule.

This final approval is based on review and evaluation of the Governor's submissions of December 11, 1985, October 26, 1987, February 18, 1988, and September 29, 1988, the existing SIP-approved TACB regulations and Texas Clean Air Act, the TACB's September 5, 1989 letter, and the July 17, 1987 Texas PSD SIP Supplement. Thus, as of the effective date of this rule, the public and PSD applicants should be aware that the TACB will have direct authority, except as limited below, to issue and enforce

the PSD permits in most areas of Texas. All PSD requests, reports, applications, and such other communications for affected facilities in Texas, in areas outside of Indian lands, should be sent directly to the Texas Air Control Board, 12124 Park 35 Circle, Austin, Texas 78753. Sources located on the Federally designated Indian lands in the State of Texas should submit the information specified above to the Chief, Region 6 Air Programs Branch, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. The PSD delegation agreement of April 23, 1981, additional authority dated December 28, 1982, and addendum dated August 21, 1983, shall remain in effect for major new sources and major modifications to existing sources for which applicability determinations would be affected by dockside emissions from vessels. Under this agreement, the TACB has administrative, technical review, and public participation authority for the PSD permit applications associated with dockside vessel emissions, while EPA retains final permit approval and enforcement authority regarding such sources, as well as oversight of the State's final authority to determine PSD applicability. All of the inquiries, requests, and PSD applications (except the permit final approval and enforcement issues) related to emissions from docked vessels should be directed to the Texas Air Control Board at the address above.

Also, Texas' incorporation by reference of 40 CFR 52.21 includes § 52.21(p), part of which constitutes the Federal visibility NSR rules for major new sources and major modifications in attainment areas. Accordingly, EPA is also approving this SIP revision as meeting the requirements of 40 CFR 51.307 with respect to visibility NSR in attainment areas.

Today's final approval allows the TACB to issue PSD permits for a subclass of municipal incinerators (municipal waste combustors). Section 305 of the 1990 Clean Air Act Amendments, Public Law 101-549, amended section 169(1) of the Act by expanding the list of major emitting facilities that are subject to PSD requirements if they emit or have the potential to emit one hundred tons per year or more of any regulated pollutant. This list now includes municipal incinerators capable of charging more than fifty tons of refuse per day. Under prior law, only municipal incinerators capable of charging more than two hundred and fifty tons of refuse per day were subject to the 100 tons-per-year

major source threshold for PSD applicability. EPA interprets this statutory change as being immediately effective.

In contrast to the treatment of lowered new source review applicability thresholds in certain other provisions of the 1990 Amendments, Congress did not grant states a period of time to develop SIP revisions to implement this change before making it effective. Compare, for example, new CAA sections 182(c), lowering major source thresholds for major sources in serious ozone nonattainment areas to fifty tons per year, and new section 182(a)(2)(C)(i), granting states two years from enactment to submit revised SIPs reflecting changes in new source review permitting requirements for nonattainment areas before the lowered thresholds become effective even absent a state submission, with section 165(a)(1), which flatly states that no "major emitting facility" may be constructed in a PSD area without a PSD permit.

The statutory change regarding the applicability threshold for municipal incinerators is simple and straightforward. It does not require any corresponding procedural or substantive change to the PSD permitting process in Texas or any other state. Accordingly, EPA believes it would be unnecessary and unreasonable to prohibit construction of the subclass of facilities in question pending a change in the threshold tonnage levels of applicable PSD regulations. However, because Texas's SIP consists largely of the incorporation by reference of the Federal PSD regulations at 40 CFR 52.21 as it existed on September 29, 1988, and since the definition of "major emitting facility" in those regulations at that time expressly did not include municipal incinerators charging fifty tons of refuse per day, the TACB by its letter of April 17, 1992 committed that TACB will review the municipal incinerators in accordance with the 1990 CAAA and will use the fifty-ton threshold for PSD applicability. This interpretation of the purpose and effect of the Texas plan is a part of today's SIP approval action. In contrast, EPA believes that in those states where it directly or by delegation implements the PSD program under § 52.21, it has authority to interpret its regulations in light of the statutory change to section 169(1) enabling the issuance of PSD permits to the sources in question rather than applying the prohibition on construction in section 165(a)(1). Because, as noted above, the statutory change in question is simple and straightforward, and because it

would serve no purpose to prohibit construction of the sources in question pending a further SIP revision, EPA believes that it has good cause within the meaning of 5 U.S.C. 553(B)(3)(B) to find that an opportunity to comment on this aspect of today's action would be unnecessary and contrary to the public interest.

The EPA has reviewed the submissions by Texas for conformance with the provisions of the 1990 CAAA, Public Law 101-549. The EPA has determined that certain statutory changes have immediate effect on the Texas PSD SIP being approved today, although none of them require additional changes to the terms of the SIP at this time. These statutory changes include the revised applicability threshold for certain municipal incinerators, discussed above in this notice. The other statutory changes that are being addressed in this notice are discussed below.

Section 193 of the 1990 CAAA revised sections 162(a) and 164(a) of the Clean Air Act to specify that the boundaries of areas designated as Class I must conform to all boundary changes at such parks and wilderness areas made since August 7, 1977 and any changes that may occur in the future. Prior law was unclear on this point. However, EPA interprets the current regulations at 40 CFR 52.21 as being able to accommodate these statutory changes, and no regulatory revisions are necessary at this time in order to implement these changes. For a discussion of EPA's policy regarding the implementation of the boundary change, please consult the memorandum entitled "New Source Review Program Transitional Guidance," from John S. Seitz, Director, Office of Air Quality Planning and Standards, March 11, 1991. In addition, the TACB letter of April 17, 1992 committed the TACB to interpret the PSD regulations in a manner consistent with the changes in sections 162(a) and 164(a) of the Act as interpreted by EPA.

Section 403 of the 1990 CAAA revised section 169(3) of the Act to specify that "clean fuels" should be considered in a BACT analysis, and to provide that a source utilizing clean fuels or any other means to comply with the BACT requirement shall not be allowed to increase above levels that would have been required under section 169(3) prior to the 1990 Amendments. EPA has interpreted the new statutory language regarding clean fuels as merely codifying present practice under the Act, under which clean fuels are an available means of reducing emissions to be considered along with other approaches

in identifying BACT-level controls. See the letter from William G. Rosenberg, Assistant Administrator, to Henry Waxman, Chairman, Subcommittee on Health and the Environment, U.S. House of Representatives, October 17, 1990. Accordingly, EPA believes that no regulatory revisions are necessary in order to implement these statutory changes. In addition, in its letter of April 17, 1992, the TACB has committed to interpreting the revised language in section 169(3) in a manner consistent with EPA's interpretation.

With respect to all of the statutory changes discussed in today's rule, EPA plans to undertake national rulemaking in the near future to adopt clarifying changes to its regulations. Upon final adoption of those regulations, EPA will call upon states with approved PSD programs, including Texas, to make corresponding changes in their SIPs.

The EPA has reviewed this request for revision of Texas' Federally-approved State Implementation Plan for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. As discussed above, the EPA has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 24, 1992. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

Under 5 U.S.C. 605(b), I certify that this final SIP approval will not have a significant economic impact on a substantial number of small entities (46 FR 8709).

This final rulemaking is issued under the authority of sections 110, 160-169, and 301 of the Clean Air Act, 42 U.S.C. 7410, 7470-7479, and 7601.

#### List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen-dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

Dated: May 21, 1992.

William K. Reilly,  
Administrator.

Title 40, part 52 of the Code of Federal Regulations is being amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

#### Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(73) to read as follows:

##### § 52.2270 Identification of plan.

(c) \* \* \*

(73) Revisions for Prevention of Significant Deterioration (PSD) are: Regulation VI—Section 116.3(a)(13) as adopted by the Texas Air Control Board (TACB) on July 26, 1985 and as revised by the TACB on July 17, 1987 and July 15, 1988 and submitted by the Governor on December 11, 1985, October 26, 1987, and September 29, 1988, respectively; the PSD Supplement as adopted by the TACB on July 17, 1987 and submitted by the Governor on October 26, 1987; General Rules—Section 101.20(3) as adopted by the TACB on July 26, 1985 and submitted by the Governor on December 11, 1985; and the TACB commitment letters submitted by the Executive Director on September 5, 1989 and April 17, 1992. Approval of the PSD SIP is partially based on previously approved TACB regulations and State statutes.

##### (i) Incorporation by reference.

(A) Revisions to the TACB Regulation VI (31 TAC chapter 116)—Control of Air Pollution by Permits for New Construction or Modification: Rule 116.3(a)(13) as adopted by the TACB on July 26, 1985 and as revised by the TACB on July 17, 1987 and July 15, 1988.

(B) Revision to TACB General Rules (31 TAC Chapter 101)—Rule 101.20(3) as adopted by the TACB on July 26, 1985.

(C) TACB Board Order No. 85-07, as adopted on July 26, 1985.

(D) TACB Board Order No. 87-09, as adopted on July 17, 1987.

(E) TACB Board Order No. 88-08, as adopted on July 15, 1988.

(F) The following portions of the PSD Supplement, as adopted by the TACB on July 17, 1987: 1. (2) Initial Classification areas in Texas, pages 1-2; 2. (3) Re-designation procedures, page 2; 3. (4) plan assessment, pages 2-3; 4. (6) Innovative Control Technology, page 3;

and 5. (7) Notification, (a) through (d), page 4.

##### (ii) Additional material.

(A) The PSD Supplement as adopted by the TACB on July 17, 1987.

((B) A letter dated September 5, 1989, from the Executive Director of the TACB to the Regional Administrator of EPA Region 6.

(C) A letter dated April 17, 1992, from the Executive Director of the TACB to the Division Director of Air, Pesticides and Toxics Division, EPA Region 6.

3. Section 52.2303 is revised to read as follows:

##### § 52.2303 Significant deterioration of air quality.

(a) The plan submitted by the Governor of Texas on December 11, 1985 (as adopted by the TACB on July 26, 1985), October 26, 1987 (as revised by the TACB on July 17, 1987), and September 29, 1988 (as revised by the TACB on July 15, 1988) containing Regulation VI—Control of Air Pollution for New Construction or Modification, § 116.3(a)(13); the Prevention of Significant Deterioration (PSD) Supplement document, submitted by the Governor on October 26, 1987 (as adopted by the TACB on July 17, 1987); and revision to General Rules, Rule 101.20(3), submitted by the Governor on December 11, 1985 (as adopted by the TACB on July 26, 1985), is approved as meeting the requirements of part C, Clean Air Act for preventing significant deterioration of air quality.

(b) The plan approval is partially based on commitment letters provided by the Executive Director of the Texas Air Control Board, dated September 5, 1989 and April 17, 1992.

(c) The requirements of section 160 through 165 of the Clean Air Act are not met for Federally-designated Indian lands. Therefore, the provisions of § 52.21 (b) through (w) are hereby adopted and made a part of the applicable implementation plan and are applicable to sources located on land under the control of Indian governing bodies.

(d) The requirements of section 160 through 165 of the Clean Air Act are not met for new major sources or major modifications to existing stationary sources for which applicability determinations would be affected by dockside emissions of vessels. Therefore, the provisions of § 52.21 (b) through (w) are hereby adopted and made a part of the applicable

implementation plan and are applicable to such sources.

[FR Doc. 92-14684 Filed 6-23-92; 8:45 am]

BILLING CODE 6560-50-M

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Public Health Service

##### 42 CFR Part 100

RIN: 0905-AD25

##### Vaccine Injury Compensation; Calculation of Cost of Health Insurance

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

**SUMMARY:** Subtitle 2 of title XXI of the Public Health Service Act (PHS), as enacted by the National Childhood Vaccine Injury Act of 1986, and as amended, governs the National Vaccine Injury Compensation (NVIC) Program. The NVIC Program, administered by the Secretary, provides that a proceeding for compensation for a vaccine-related injury or death shall be initiated by service upon the Secretary and the filing of a petition with the United States Claims Court. In some cases, the injured individual may receive compensation for future lost earnings, less appropriate taxes and the "average cost of a health insurance policy, as determined by the Secretary." This final rule sets out the amount to be deducted from the award of compensation which reflects the average cost of a health insurance policy.

**DATES:** This regulation is effective on July 23, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas E. Balbier, Jr., Director, Division of Vaccine Injury Compensation, 6001 Montrose Road, room 702, Rockville, Maryland 20852; telephone number: 301 443-6593.

**SUPPLEMENTARY INFORMATION:** On June 28, 1991, the Assistant Secretary for Health, with the approval of the Secretary of Health and Human Services, published in the Federal Register (56 FR 29608), a Notice of Proposed Rulemaking (NPRM) to establish regulations for the National Vaccine Injury Compensation Program (NVIC) to set out the method for determining the amount to be deducted from the award of compensation which would reflect the average cost of a health insurance policy. The public comment period on the proposed regulations closed on August 27, 1991.